

Kelley J. Henry
(TN Bar No. 021113)
Federal Public Defenders
810 Broadway, Suite 200
Nashville, TN 37203
Telephone: (315)736-5047
kelley_henry@fd.org

Denise Young, Esq.
(AZ Bar No. 007146)
2930 North Santa Rosa Place
Tucson, AZ 85712
Telephone: (520)322-5344
Dyoung3@mindspring.com

Counsel for Plaintiffs

Jon M. Sands
Federal Public Defender
Dale A. Baich
(OH Bar No. 0025070)
Robin C. Konrad
(AL Bar No. 2194)
850 West Adams, Suite 201
Phoenix, Arizona 85007
dale_baich@fd.org
robin_konrad@fd.org
602.382.2816
602.889.3960 facsimile

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Edward Harold Schad, Jr., and Robert
Glen Jones, Jr.,
Plaintiffs,

v.

Janice K. Brewer, *et al.*,
Defendants.

Case No.2:13-cv-02001-ROS

Plaintiffs' Request for Clarification from
Defendants

**Executions Scheduled October 9, 2013,
and October 23, 2013**

Defendant Director Charles Ryan indicated in an affidavit submitted to this Court that "unexpired, domestically obtained Pentobarbital" would be used in Plaintiffs' scheduled executions. (ECF No. 19-1, ¶ 4.) In response to the ACLU's request for information regarding the drugs to be used in the executions of Mr. Schad and Mr. Jones (ECF No.11-1, Ex. K), the Arizona Department of Corrections provided documentation

1 regarding a purchase of the drug Nembutal,[®] as well as product inserts for Nembutal[®]
 2 (ECF No. 1, Ex. E; ECF No. 16).¹

3 On October 5, 2013, in response to this Court's Order (ECF No. 23), Defendants
 4 filed their Notice of Disclosure, in which they state that the manufacturer of the drug
 5 they intend to use in Plaintiffs' executions is Lundbeck, Inc. (ECF No. 24 at 1, ¶ a.)

6 Plaintiffs believe that this information may be faulty or inaccurate. Before
 7 approximately December 2011, Nembutal[®] sold legitimately in the United States was
 8 manufactured solely by Hospira for Lundbeck, Inc. (*See, e.g.*, Ex. S, photo of vial of
 9 Nembutal[®]; *see also* Compl. at Ex. C, at 1 ("For instance, if Hospira was the
 10 manufacturer for Lundbeck, and the brand name of the drug was Nembutal,[®] Messrs.
 11 Jones and Schad would know that the pentobarbital was FDA-approved.").

12 Therefore, Plaintiffs request this Court to order Defendants to provide
 13 clarification (e.g. through photographs of the labels or vials of the drug), indicating
 14 whether Lundbeck, Inc., is, in fact, the manufacturer of the pentobarbital to be used in
 15 Plaintiffs' scheduled executions; whether Hospira is the manufacturer of the
 16 pentobarbital to be used in Plaintiffs' scheduled executions; or whether another entity is
 17 the manufacturer of the pentobarbital to be used in Plaintiffs' scheduled executions.

18 Plaintiffs further request this Court to order Defendants to state whether the
 19 pentobarbital to be used in their scheduled executions is Nembutal.[®]

20 Respectfully submitted this 5th day of October 2013.

21 Kelley Henry
 22 Asst. Federal Public Defender

23 Denise Young

24 s/ Kelley Henry
 25 Counsel for Schad

Jon M. Sands
 Federal Public Defender
 Dale A. Baich
 Robin C. Konrad
 Assistant Federal Public Defenders

s/ Dale A. Baich
 Counsel for Jones

28 ¹ Nembutal[®] is a name brand for the drug pentobarbital.

Certificate of Service

I hereby certify that on October 5, 2013 , I electronically filed the foregoing Plaintiffs' Request for Clarification from Defendants with the Clerk's Office by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Dale A. Baich
Capital Habeas Unit